

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS

CRP(PD). No.4674 of 2012

and M.P.No.1 of 2012

1. Thulasimani @ Thulasi

2. Ravivarma

3. Sindhu

.. Petitioner/Respondent/Plaintiff

Vs.

M.Krishnan

.. Respondent/Petitioner/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in I.A.No.299/12 in O.S.No.61/10 on the file of the District Munsif cum Judicial Magistrate, Kodumudi dated 21/08/12.

For Petitioner	: Mr.V.Balamurugan
For Respondent	: Mr.P. Kannan Kumar

ORDER

This revision has been filed by the wife as against her husband.

2. The first plaintiff married the first defendant. They were blessed with plaintiffs 2 and 3. Difference of opinion arose between the spouses. With respect to certain immovable property, the first

defendant filed O.S.No.50 of 2008 seeking injunction as against his wife. In the said suit, the wife has marked Ex.D.1 stated to be a partition list with respect to the said property executed between them. Ultimately, the said injunction suit was dismissed on some technical grounds.

3. Subsequently, the wife filed the present suit in O.S.No.61 of 2010 seeking a declaration on the strength of Ex.D.1. The first defendant filed written statement disputing the very genuineness of Ex.D.1. He did not own the signature therein. In the circumstances, the first defendant filed I.A.No.299 of 2012 under Section 45 of the Indian Evidence Act for holography / handwriting test.

4. After hearing both sides, the trial Court, allowed the petition and appointed an Advocate/Commissioner for this purpose.

5. Aggrieved, the wife/1st plaintiff has directed this revision.

6. The learned counsel for the revision petitioner contended that it is a needless exercise when especially, the very same Ex.D.1 has been dealt with in O.S.No.50 of 2008. Further, as against the dismissal

of the said suit, the husband/first defendant has not preferred any appeal.

7. The learned counsel for the revision petitioner further contended that the deed taken for comparison is not contemporaneous in point of time to Ex.D.1.

8. The learned counsel for the revision petitioner further contended that as already Ex.D.1 has been let in as a documentary evidence in O.S.No.50 of 2008, the presumption under Section 80 of Indian Evidence Act arises against the truth and genuineness of Ex.D.1. That cannot be again questioned in the present suit.

9. On the other hand, the learned counsel for the respondent/defendant would contend that execution of Ex.D.1 has been specifically denied in the written statement. There is no categorical finding as to its truth and genuineness in O.S.No.50 of 2008. The genuineness of Ex.D.1 is a dominant factor in the present suit because based on Ex.D.1, the 1st plaintiff is enforcing some property right as against the 1st defendant.

10. The learned counsel for the respondent further contended that as the very execution and signature thereof has denied the truth and genuineness of Ex.D.1 scientifically, through an expert has to be established. It is permissible under Section 45 of the Indian Evidence Act.

11. The learned counsel for the respondent also contended that the non filing of any appeal as against the dismissal of his prior suit in O.S.No.50 of 2008 will not shut his mouth for questioning the very genuineness of Ex.D.1 in the present suit.

12. The learned counsel for the respondent would further contend that in the facts and circumstances, there is no occasion here to invoke Section 80 of the Indian Evidence Act because the very genuineness of the document is required to be proved in a manner known to law.

13. The learned counsel for the respondent also contended that the comparison of questioned Ex.D.1 with the admitted title deed is not so much remote in point of time.

14. I have anxiously considered the rival submissions, perused

the impugned order and the materials on record.

15. This is a case of not of severing the relationship between the spouses. It is a case of dividing the property between them. The sheet anchor of the case of the first plaintiff/wife in this case is Ex.D.1 which stated to be a partition arrangement stated to have been executed between the spouses, namely, first defendant and the first plaintiff.

16. The suit was put on trial. 1st plaintiff deposed as P.W.1. In her evidence, she has introduced the said Ex.D.1. The defendant questioned the truth and genuineness of it and had denied the signature therein.

17. Section 45 of the Indian Evidence Act introduces expert evidence. There are various experts. There is an handwriting expert. He gives his opinion on the questioned signature, writings on comparing with admitted writings. It is intended to assist the Court to arrive at the truth of the matter.

18. This expert opinion evidence alone is not the sole test to decide such disputed fact. An handwriting expert's opinion is based on

the probability test and it is not 100% exactness in this branch of science, is yet to be achieved. Besides such opinion evidence, other relevant, acceptable and legal evidence also have to be adduced by the parties and in the light of all cumulatively the genuineness of Ex.D.1 is to be decided.

19. We are not to accept the non-contemporaneous remoteness test pleaded with regard to the admitted document taken for comparison. Still it is open to the expert to say about the admitted document for his comparative study based on the principles relating to the science of handwriting as we are not experts.

20. In the facts and circumstances of this case, the trial Court having adopted the course of sending Ex.D.1 for testing by an expert cannot be faulted.

21. It is pertinent to note that in the earlier suit, no categorical finding as to the truth and genuineness of Ex.D.1 has not been decided.

22. Section 80 of the Indian Evidence Act introduces a legal

fiction in the form of a presumption and it is couched in a mandatory language, "shall" (also see Section 4 of the Evidence Act), but reading the tenor of Section 80 CPC cannot accommodate, the arguments/objections of the revision petitioner with regard to sending of Ex.D.1 to test it on the altar of Ex.D.1 having been already introduced in the earlier suit in O.S.No.50 of 2008.

23. In view of the foregoing, ordered as under:

(i) This revision fails and it is dismissed.

(ii) The Advocate/Commissioner will carry out his commission work and file his report and if need be, he can seek a reasonable sum as additional remuneration.

(iii) As the suit is of the year 2010 and as it arose out of a matrimonial discordance dragging a whole family into the case, the trial Court will expeditiously dispose of the suit.

(iv) It is also made clear that there is no bar in reconciliating, mediating this dispute between the parties by resorting to and one of the mode prescribed in Section 80 C.P.C.

Dr.P.DEVADASS,J

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(v) No costs.

(vi) Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
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03.4.2017

To

1. The Principal District Judge,
Erode.

2. The District Munsif cum Judicial Magistrate,
Kodumudi

Copy to

1. The Registrar (Judicial)

2.The Assistant Registrar (Appellate side)
High Court, Madras.

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